15CV 4311

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK x

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2015 MAY 27 A 9:37

STEVEN JUDE, Plaintiff.

JURY TRAIL DEMANDED

-against-

Complaint

THE CITY OF NEW YORK, a municipal corporation; DEPARTMENT OF CORRECTION, ("DOC"): a municipal corporation; JOSEPH PONTE, Commissioner of the New York City Department of Correction, ("DOC"); MONICA WINDELY, Warden of North Infirmary Comman, ("NIC"); CORIZON HEALTH INC.; Dr. JAY COWAN, Regional Medical Director; NEIL LEIBWITZ, MD. Director of Mental Health; MARILYN SILVA, RN., CCHP, regional Asst. Direcot of Nursing; ZACHARY ROSNER, Assistant Director OF Health Affairs; NINA EDWARDS, ("DOC") Disability Rights Coordinator.

Defendants.

x

I. Complaint

Plaintiff, STEVEN JUDE, pro-se for his complaint states as follows:

II. Parties, Jurisdiction and Venue

1. Plaintiff STEVEN JUDE, was confined at the North Infirmary Command, (hereinafter referred to as ("NIC") a municipal City jail located on Rikers Island, 1500 Hazen Street, East Elmhurst, NY 11370 in the City of New York.

2. Plaintiff STEVEN JUDE is and was at all times mentioned herein an adult citizen of the United States as well as a resident of the State of New York.

3. Defendant CITY OF NEW YORK was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

4. Defendant DEPARTMENT OF CORRECTION, (hereinafter referred to as ("DOCS") was at all relevant times herein a duly authorized public authority and/or correction department, authorized to perform all functions of a correction department as per the applicable sections of the aforementioned municipal corporation CITY OF NEW YORK.

5. Defendant JOESPH PONTE, was at all relevant times herein the Commissioner of the New York City Department of Corrections for the CITY OF NEW YORK, with the responsibility for operating and maintaining detention, penal, and corrective institutions within the CITY OF NEW YORK, including the North Infirmary Command, ("NIC").

6. Defendant MONICA WINDLEY, is and was at all relevant times herein the warden of the municipal detention center known as North Infirmary Command, ("NIC") for the CITY OF NEW YORK, as warden of the prison, Defendant manages its day-to-day operations adn executes its policies.

7. Defendant CORIZON HEALTH, INC. is and was at all relevant times herein engaged in proving medical services for the CITY OF NEW YORK in the CITY'S "DOC" detention facilities, including the North Infirmary Command, ("NIC") under a contract with the CITY OF NEW YORK, CORIZON HEALTH, INC. acted in the capacity of agent, servant, and employee of the CITY OF NEW YORK, and is sued in its individual capacity.

8. Defendant JAY COWAN, is and was at all relevant times herein an employee of CORIZON HEALTH, INC., with the responsibility as the Regional Medical Director and acted as an agent of CORIZON HEALTH, INC. and the CITY to provide medical services in the CITY'S detention facilities.

9. Defendant LUIS CINTRON, is and was at all relevant times herein an employee of CORIZON HEALTH, INC. with the responsibility as the deputy Medical Director and acted as an agent of CORIZON HEALTH, INC. to provide medical services in the CITY'S detention facilities.

10. Defendant NEIL LEIBOWITZ MD, is and was at all relevant times herein an employe of CORIZON HEALTH, INC. with the responsibility as the Director of Mental Health and acted as an agent of CORIZON HEALTH, INC. and the CITY to provide medical services in the CITY'S detention facilities.

11. defendant MARILYN SILVA, RN, CCHP, is and was at all relevant times herein an employee of CORIZON HEALTH, INC. with the responsibility as the Regional Asst. Director of Nursing and acted as an agent of CORIZON HEALTH, INC. and the CITY to provide medical services in the CITY'S detention facilities.

12. Defendant ZACHARY ROSNER, is and was at all relevant times herein an employee of CORIZON HEALTH, INC. with the responsibility as the Asst. Director of Health Affairs, and acted as an agent of CORIZON HEALTH, INC. and the CITY to provide medical services in the CITY'S detention facilities.

13. Defendant NINA EDWARDS, is and was at all times relevant herein the Disability rights coordinator allegedly of the municipal DEPARTMENT OF CORRECTION, ("DOC"), designated with the responsibility to coordinate DOC'S efforts to comply with DOC'S obligations under the Merican with Disabilities Act, ("ADA") with respect to DOC"S inmates in accordance with 28 C.F.R. 35.107.

14. This action arises under and is brought pursuant to 42 U.S.C. section 1983, 42 U.S.C. 12131, 28 C.F.R. 35.107 Title II of the ADA Section 504, and Rehabilitation Act of 1973, to remedy the deprivation, under color of state law, of rights guaranteed by the Eighth, Sixth, Fourtenth Amendments to the United States Constitution. This court has jurisdiction over this action pursuant to 28 U.S.C sections 1331 and 1343.

15. This court ha ssupplemental jurisdiction over plaintiffs State law claims.

16. Plainitff's claims for injunctive relief are authorized by Rule 65 of the Federal Rules of Civil Procedure.

17. this cause of action arose in the Southern District of New York, therefore venue is proper under 28 U.S.C. Section 1391(b).

III. STATEMENT OF CLAIM

18. at all relevant times herein, defendants were "persons" for the purpose of 42 U.S.C 1983, 42 U.S.C. 12131, title II section 504, of the American with Disability Act and Rehabilitation Act of America and acted under color of law to deprive plaintiff of his constitutional rights as set forth more fully below.

IV. Statement of Facts

19. Historically the CITY and DOCS have showed deliberate indifference, and negligence towards the disabled inmates being confined in it's detention facilities, and have not followed mandate sof the law or the American with disability Act or Rehabilitation Act of 1973. WHEREAS, the United States of America had to bring a civil action against the New York City Department of Correction to enforce a voluntary compliance of the public entity, and several other class action and individual lawsuits brought over the years by disabled inmates against the CITY for violations of their constitutional rights see: Bennett v. City, et, al. 07-CV-2823,(RPP) settlement agreement.

20. Prison Health Services,(PHS) which merged with CORIZON HEALTH, INC. THEIR SERVANTS, AGENTS, AFFILIATED PHYSICIANS, ASSISTANTS, RESIDENTS, INTERNS AIDES, EMPLOYEES AND/OR MEDICAL PERSONNEL at the North infirmary Command,("NIC") have showed deliberate inddiference and negligence towards disabled inmates in its custody in such a manner as to manifest a disregard for the safety and well-being of the plaintiff herein, and not in accordance with the good and accepted standards of medical care and practice, thereby causing plaintiff to sustain unncessary and wanton infliection of pain, and permitting plaintiff condition to worsen and deteriorate.

21. In general defendants showed negligence and deliberate indiffernce to the reasonable accommodations and medical needs of disabled prisoners beign held in its custody, and particulary neglected those of the plaintiff in this action.

22. In the Bennett v. City, et, al. Stipulation and order of settlement 07-cv-2823,(RPP) at Number #13 Shower it States that DOCS shall establish and maintain a command level order and shall provide a supply of shower mats sufficient to carry out and comply with this command level order. DOCS shall continue to maintain and implement a protocol that required the daily cleaning and sanitizing of the shower mats in the bathroom area and floor area beneath the mats.

23. DOCs has failed to implement a protocol that required daily cleaning by the institutional sanitation stewarts thats paid $18.00 an hour to clean and sanitize Dorm #3, the mats that were origianlly placed down was lifted up by the workers for failure to clean on a daily basis wheras dirt and grime build-up was beneath the mats, the institutional aides failed to clean the mats at all, which were to be cleaned on a daily basis, instead the aides took the mats outside and left them dirty hanging on the gate, where they have been for 5 months.

24. DOCS failed to Hire and maintain (2) Inmate assistants to place a shower mat on the floor of selected shower its only one Inmate Assistant the other one DOCs have working in their Kitchen and their is some days that No Inmate Assistant is on duty which corrections Log in the Housing area log book if a inmate assistant is on duty to assist visually impaired and wheelchair inmates.

25. On April 30th 2015, plaintiff a "legally Blind" inmate in the disabled Dorm#3 slipped and fell in the Shower while taking a shower at 7:55am, their was no Inmate Assistant on duty as per policy and procedure and mandated by the Bennett settlement agreement, nor was their any mats in the shower.

26. Plaintif laid in the shower on the floor in pain after notfying corrections officers for approximately (25) mintues waiting for the CORIZON medical staff to arrive from the next dorm right next to dorm 3, which was dorm 2.

27. The Corizon Medical staff instead of responding to the emergency of plaintiff slipping and falling in the shower, waited until the tour changed and failed to notify the new shift that plaintiff had slip and fell in the shower which resulted in plaintiff suffering unnecessary

and wanton infliction of pain. whereupon the next shift responded only after the correction officer called Dorm#2 Medical staff again to respond to the emergency in Dorm# 3.

28. There is no visual Aids or reasonable accommodations being provided to legally blind inmates, such as magnifying glass or sheets, shades for photo-sensitive eyes, talkign watches, personal supportive shoes, escorts, assistants to help the blind inmates in reading adn going to and from areas.

29. DOCS has failed to implement and follow procedures for "legally Blind" inmates eligible for Federal Postage benefits-as described in the United States Postal Service publication 347: FREE MATTER FOR THE BLIND AND VISUALLY HANDICAPPED peson-are able to take advantage of such benefits while in DOCS custody. DOCS has failed to ensure that its employees are trained about the procedures or are properly disciplined for non-compliance with the procedure.

30. DOCS has failed to provide and maintain a shower chair in Dorm 3's punitive segregation area, or one chair in each of the dorm #3 wheelchair accessible showers, DOCS has failed to train a inmate assistant to]assist visually impaired add wheelchair utilizing inmates in placing a shower chair inside a selected shower area immedicately prior to that inmates use of the shower area.

31. On the day plaintiff slipped and fell in the shower there was NO inmate assistant on duty as per policy and procedure to assist disable inmates with such duties as mandated, when this was part of a settlement stipulation for DOCS to follow for the safety of its disable inmates in their care, custody and control.

32. Plaintiff was finally taken to the medical dorm#2 for treatment and was provided with medical attention and was subsequently rushed out to urgent care for x-rays adn it was determined plaintiff had an sprang ankle, and pain medication and a ice pack was provided to reduce the swelling after it was wrapped with a ace bandage.

33. The disability Rights Coordinator has failed to ensure that procedures for the prompt and equitable resolution of ADA complaints by inmates and/or requests by inmates with disabilities for reasonable accommodations are in place, publicized, and implemented, by process, investigating, and promptly acting upon inmates complaints and/or reasonable accommodations, and ensure that all DOC staff who interact with inmates with disabilities are provided with adeqaute and approriate information and training on ADA issues.

34. DOCS ha sfailed to ensure that all visually impaired inmates are transported in a safe manner consistent with the mandates of the ADA. DOCS is transporting plaintiff by regular transit bus to and from court and hospital instead of the para-transit vans which has the lap/shoulder restraints, which was part of the settlement agreement stipulated in the Bennett V. CITY et, al. 07-cv-2823(RPP).

35. Defendants CORIZON HEALTH, INC. their agents, servants, and/or employees, failed to employ due reasonable, proper and appropraite skill and care in responding to an emergency, examination and management of the plaintiff; in allowing the plaintiff to lay on the cold shower floor; untreated; unattended; in allowing and permitting the plaintiffs condition to worsen and deteriorate, in failing to respond to an emergency adequately and timely in accordance with standard and accepted medical practice and procedure.

36. Defendants CORIZON HEALTH, INC. their agents, servants and/or employees failed to monitor the plaintiff; in causing and/or allowing the plaintiff to fall; in failing to timely diagonsoe the plaintiff's true condition; in failing to place on plaintiffs chart, floor card and wrist that he was a fall Risk; in failing to properly supervise plaintiff; in causing and/or allowing the plaintiff condition to worsen and deteriorate; in improperly retaining unqualified and unskilled physicians and personnel; in failing to review and evauluate staff and physicians; in failing to exercise the degree of skill, care and diligence to which this plaintiff was entitled.

Claims För Relief

37. That by reason of the foregoing, the plaintiff STEVEN JUDE, was severly injured, and damaged, rendered sick, sore lame and discriminated against as an disabled indivdual, sustained severe nervous shock and mental anguish, unnecessary and wanton pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries, plaintiff incurred and/or in the future will necessarily incur future hosptial and/or medical expenses in an effort to be cured of said injuries; and plaintiff has suffered violations of his rights under the American with disabilties Act. title II of the ADA section 504; plaintiff will be unable to pursue th eusual duties with the same degree of eficiency as prior to the deliberate indifference and negligence discrimination, and malpractice of the CITY, DEPARTMENT OF CORRECTIONS and CORIZON HEALTH, INC. all to plaintiff's great damage.

relief requested

WHEREFORE, plaintiff request that this court grant the following releif:

38. plaintiff request an order declaring that the defendnats have acted in violation of the Am3erican with disabilities Act, Title II section 504, violated prior settlement agreements and mandates of the law and the United States Constitution and State laws.

39. Plaintiff seek to go to trial or damages

Signed this 22nd day of May, 2015

STEVEN JUDE

I declare under the penatly of perjury that the foregoing is true and correct.

Steven Jude 3491504029
1500 Hazen St
E Elmhurst, N.Y. 11370

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